

Doing Business In Missouri...

Hiring Employees

A joint project of:



Editor:

Sharon Gulick

Missouri Department of Economic Development

With contributions from:

Roy Thirtyacre, Missouri Department of Economic Development

Donna Lucas, Missouri Department of Economic Development

Alan Hauff, University of Missouri Outreach and Extension

May 2000

Table of Contents

Acknowledgments	3
Preface	4
Resource Agencies	4
Icons Used in This Book	4
Assistance For Speech and Hearing Impaired	5
Disclaimer	5
University Outreach and Extension	5
Small Business Development Centers	5
Hiring Employees	6
TIPS ON HIRING	6
What Is Involved?	6
Assistance to Employers	6
Who Are Employees?	7
Contract Employees / Independent Contractors	9
EMPLOYER RESPONSIBILITIES	13
Who is a liable employer?	13
Posters	14
Records	15
Contribution and Wage Report	15
Employment and Wages	16
OBTAINING AN EMPLOYER IDENTIFICATION NUMBER	17
FEDERAL REQUIREMENTS	17
Withholding Taxes	17
Citizenship	17
Employee's Withholding Allowance Certificate (W-4)	18
Social Security and Medicare Taxes	18
STATE REQUIREMENTS	19
New Hire Reporting	19
Withholding Taxes	20
Unemployment Insurance	21
"Report To Determine Liability Status" (MoDES 2699)	22
Worker's Compensation	23
OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)	26
INTERNAL REVENUE SERVICE (IRS) ASSISTANCE AND PUBLICATIONS	27

Acknowledgments

This edition of *Doing Business In Missouri...Hiring Employees* is published by the Missouri Department of Economic Development's Missouri Business Assistance Center (MBAC) in collaboration with University Outreach and Extension and the Missouri Small Business Development Centers.

Thanks and appreciation goes to the following individuals, who provided advice, content and helped with the editing of the final product:

Roy Thirtyacre, Missouri Business Assistance Center
Donna Lucas, Missouri Business Assistance Center
Alan Hauff, University Outreach and Extension, University of Missouri-St.Louis
Glen Giboney, SBDC, Truman State University
Matt Nichols, University Outreach and Extension, Kirksville
Carole Price, University Outreach and Extension, St. Louis
Buz Sutherland, SBDC, Southeast Missouri State University
Virgil Woolridge, University Outreach and Extension, Mexico
Missouri Department of Revenue, Division of Taxation
Missouri Secretary of State's Office

Preface

Missouri businesses contribute significantly to the economy of the state by creating new jobs and expanding markets for Missouri products.

Doing Business In Missouri...Hiring Employees is designed to provide information to new or existing business owners on how to obtain financial assistance in the state.

RESOURCE AGENCIES

Additional copies of this publication or assistance in getting your new business started can be obtained from your county University Outreach and Extension office or regional Small Business Development Center. Contact information for these organizations can be found in your local telephone directory. You can also contact the Missouri Business Assistance Center:

Missouri Business Assistance Center
Missouri Department of Economic Development
301 West High Street, Room 720
P.O. Box 118
Jefferson City, MO 65102-0118
Phone: 1-888-751-2863
Fax: 573/526-2416
E-mail: mbac@mail.state.mo.us
Web: <http://www.ecodev.state.mo.us/mbac>

ICONS USED IN THIS BOOK

The following icons are used throughout this book to alert you to important information:



Identifies state or federal forms that must be filed.



Carefully read and comply with these requirements. This icon designates information that may be critical to your new business endeavor. Generally, contains legal, licensing or regulatory information.



Designates information or resources that you should “check out.”



Highlights helpful or cautionary information. Generally this refers to state or federal regulations that may affect your business; also references important resources and helpful hints.

ASSISTANCE FOR SPEECH AND HEARING IMPAIRED

Assistance for the speech and hearing impaired is available through RELAY MISSOURI at 1-800-735-2466 (voice) or 1-800-735-2966 (TT). Copies of this publication are made available on audiotape for the visually impaired. Please contact the Wolfner Library for the Blind and Physically Handicapped (573/751-8720 or 1-800-3922614) for ordering information.

DISCLAIMER

This publication is intended to serve as a reference document and in no way attempts to provide all of the information necessary to finance a business in Missouri. It is published with the understanding that the publisher is not engaged in rendering legal, accounting or other professional services. The advice of an attorney and/or accountant should be sought before entering into any business activity or contract.



UNIVERSITY OUTREACH AND EXTENSION

This project is supported by the University of Missouri Outreach and Extension Outreach Development Fund.



SMALL BUSINESS DEVELOPMENT CENTERS

Small Business Development Centers operate in partnership with the U.S. Small Business Administration under Cooperative Agreement No. 1-7620-0026-13. The support given by the U.S. Small Business Administration through such funding does not constitute an express or implied endorsement of the co-sponsor(s)' or participants opinions, products or services. Programs are nondiscriminatory, and reasonable accommodations will be made, upon request, for persons with disabilities.

This publication was supported by the Missouri SBDC in partnership with the U.S. Small Business Administration

Hiring Employees

At some point, most businesses are faced with the need to hire new employees. This section provides an overview of what is involved in hiring and paying employees.

As you may have already surmised, starting and operating a business involves a lot of paperwork. Hiring employees (or being a corporation with you as the only employee) multiplies the amount of paperwork you must complete.

Before you actually hire, it is highly recommended that you consult with your accountant or with an employer service representative at your local Job Service Office (Employment Security). The local Job Service Office can assist you with locating employees.



You will also want to obtain a “Business Tax Kit” and a copy of “Circular E, Employer’s Tax Guide” from your local IRS office or call 1-800-829-3676. “Circular E” explains federal tax withholding and Social Security tax requirements for employers as well as containing up-to-date withholding tables for you to use to determine how much federal income tax and Social Security tax is to be withheld from each employee’s paycheck.

TIPS ON HIRING

What Is Involved?

Once you begin paying salary or wages to employees, you must collect taxes from your employees. The primary taxes are: income taxes and Social Security (FICA). If you have not already done so, you must apply for a federal employer identification number (EIN) -- Form SS-4. This number is used to identify your business on payroll and income tax returns, as well as for other federal tax purposes. Occasionally you will encounter a financial institution that will require an EIN to open a business account. Corporations and partnerships must file Form SS-4 even if they have no employees.



Assistance to Employers

The Missouri Department of Labor and Industrial Relations offers employment services and other assistance to employers and employees. The network of Job Service offices provides a complete labor exchange that

includes a computerized Job Bank, applicant recruitment, selection and referral, labor market information, latest placement methods, testing and other assisted services. Missouri WORKS! (www.works.state.mo.us) provides the latest information pertaining to employment opportunities in Missouri as well as information on labor, employment, education / training, labor market information, and other programs and services related to employment and training. Contact your local Job Service Office for more information.

Who Are Employees?



Not all individuals who perform services for your business will necessarily be employees. The determination of whether an individual is an employee or independent contractor for tax purposes is important for several reasons. Wages paid to employees generally are subject to employment taxes imposed under state and federal law. Only compensation paid to employees is used to calculate benefits.

An “employee status determination” is made according to three tests:

Test 1: provides that an officer or a corporation is an employee of the corporation.

Test 2: provides that the usual common-law rules are used in determining whether an individual is an employee. Test 2 is often referred to as “The Twenty Factors” (see page 50) in determining independent contractor status. If an individual does not qualify as an employee under Test 1 or Test 2, a third test is applied.

Test 3: provides coverage to all workers who are covered by the federal employment law. The federal employment law also covers, as employees, individuals in four occupational groups who are not employees under the common-law rules but who perform services under certain specific circumstances.

Test 1:

Generally, an officer of a corporation is an employee of the corporation. However, an officer of a corporation who as such does not perform any services or performs only minor services and who neither receives, nor is entitled to receive, directly or indirectly, any remuneration for serving as an officer is not considered to be an employee of the corporation.

Test 2:

An individual is an employee under the common-law control test when the individual is subject to control by the person for whom the services are rendered as to the way the work is done -- i.e., control over when, where and

how the work is done. The control need not be actually exercised for an employer-employee relationship to exist; the right to exert such control is enough.

Test 3:

The following workers, who may not otherwise qualify as employees under the common-law rules, are required to be provided Missouri unemployment coverage:

- a. Agent-driver or commission-driver engaged in distributing food products (other than milk), laundry or dry cleaning services for his principal;
- b. Traveling or city salesman engaged in the solicitation of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments concerning merchandise for resale or supplies for use in their business operations.

A worker may qualify as an employee under Test 3 if, in addition to meeting the specific requirements for the particular occupation, all of the following conditions are met:

- a. the worker is a member of one of the designated occupational groups;
- b. the contract contemplates that the worker perform substantially all of the services personally;
- c. the worker has no substantial investment in facilities for doing the work; and
- d. the services are performed in a continuing relationship; are not in the nature of a single transaction.

The *contract of service* under which the work is done may be oral or written or an informal arrangement.

The *contract of work* must contemplate that the worker perform substantially all the work. The important thing is not whether the worker delegates part of the work to another but rather whether the worker has the authority under the contract to do so. Mutual intent of the parties governs. A contract that contemplates the hiring of another will not affect the personal service requirement if the services delegated are merely incidental to the primary activity undertaken.

Whether a *substantial investment* is made by the worker depends on:

- the value of the worker's investment compared to the total investment;
- whether the facilities furnished are essential for the work or for the convenience of the worker;

- whether the worker is purchasing or leasing space from the person for whom the work is performed; and
- whether the facilities furnished by the worker are considerably more extensive than those usually furnished by other workers performing comparable services.

Facilities include such items as office furniture, fixtures, premises, tools and machinery. Facilities do not include education, training, good will, tools or other items commonly provided by employees or the worker's own vehicle for personal transportation.

A *continuing work relationship* exists if the work is regular or frequently recurring. A single job transaction, even though it covers a considerable period of time, is not generally considered performed in a continuing relationship.

As a general rule, someone who is performing service as an employee cannot be self-employed with respect to the same service. However, under certain conditions set forth in the Act and as noted above, service may be deemed to be performed as self-employment. Affected persons are U.S. citizens in the employ of foreign governments, ministers and members of religious orders, crews on fishing boats, newspaper vendors, real estate agents and direct sellers. If these persons meet conditions for deeming their services to be self-employed, it is unnecessary to consider their status as employees.

Although a person may be an employee under one or more of the above tests, the services may be exempted from employment by special provisions. For more information, see Sections 288.032-288.036 of RSMo.

Contract Employees / Independent Contractors

Individuals who do work for you may be classified into one of four categories of service providers:

- employees
- independent contractors
- statutory employees
- non-statutory employees

You, the hiring company, are the service recipient. That is, you receive the service or product and you pay to have that service or product provided to you.

Your responsibility for payment of state and federal taxes, social security (FICA), unemployment tax, and employee benefits depends on which of the four categories the workers fall under. Many companies, small and large,

would prefer to hire some, or even all, of their workers as “independent contractors.” When an independent contractor provides a service or product, the service recipient does not have to withhold employment taxes, pay social security taxes (FICA), or pay unemployment tax.

Independent contractors are considered self-employed. As such, they are responsible for reporting their income and paying the appropriate state and federal taxes. The hiring company is not required to pay benefits or worry about minimum wage regulations. All the hiring company must do is file federal income tax form 1099 at the end of the year. The 1099 is a federal tax form stating the amount paid to independent contractors by the company during that year. In addition to the savings in tax, companies hiring independent contractors save the cost of the bookkeeping associated with those taxes.

The category into which the workers fit, however, is determined by the conditions under which they work and the kind of work they do. You may not simply select a category and define them as you desire. Choosing the correct categories for the people who do work for you may be critical to the continuation of your business. The status of workers depends not on what the workers or the service recipients want, but on what work is provided and under what conditions.

The Internal Revenue Service (IRS), as part of its program to collect the maximum amount of tax owed, has begun to investigate and prosecute cases where individuals are classified as independent contractors.

The list that follows gives 20 factors or “tests” used by the IRS when determining whether a person is an employee or an independent contractor. The question of “who controls the details?” appears to be the primary basis on which the determination is made.

No single factor or small group of factors can be taken as conclusive evidence of the presence or absence of control. To determine a worker’s status, all the factors must be evaluated. The weight given to the individual factors is not equal, and some factors may not apply to certain occupations. Obtaining determination as an independent contractor can be very difficult.

These twenty factors show control over details of work must be weighed against or compared to those that point to an independent contractor status. The main factors to be considered in determining control are as follows:

1. Actual instruction or direction of worker. A worker who is required to comply with instructions about when, where and how to work is ordinarily an employee. The instructions may be in the form of manuals or written procedures that show how the desired result is to be accomplished.

2. Training of a worker by an experienced employee working with him by correspondence, by required attendance at meetings and by other methods is a factor indicating control by the employer over the particular method of performance. This is especially true if the training is given periodically or at frequent intervals. An independent contractor ordinarily uses his own methods and receives no training from the purchaser of the services.
3. Integration of the person's services in the business operations generally shows that he is subject to direction and control. When the success or continuation of a business depends to an appreciable degree on the performance of certain kinds of services, the people who perform those services must necessarily be subject to a certain amount of control by the owner of the business.
4. If the services must be rendered personally, it indicates an interest in the methods, as well as the results. Lack of control may be indicated when the person has the right to hire a substitute with the permission or knowledge of the employer.
5. Hiring, supervising, and payments to assistants on the same job as the worker generally show employer control over the job. Sometimes one worker may hire, supervise and pay the other workers. If this is done under a contract requiring that the worker furnish materials and labor and under which he is responsible only for the attainment of a result, the worker is an independent contractor. On the other hand, if he does so at the direction of the employer, he may be acting as an employee in the capacity of a foreman for or representative of the employer.
6. The existence of a continuing relationship between an individual and the person for whom he performs services tends to indicate an employer-employee relationship. If the arrangement contemplates continuing or recurring work, the relationship is considered permanent, even if the services are rendered on a part-time basis, they are seasonal in nature or the person actually works for only a short time.
7. The establishment of set hours of work by the employer bars the worker from being master of his own time, which is the right of the independent contractor.
8. Full-time work for the business is indicative of control by the employer since it restricts the worker from doing other gainful work. An independent contractor, on the other hand, is free to work when, and for whom, he chooses. Although not specified, full-time work may be required. For example, setting a quota that requires all his working time or denying him the right to work for anyone else may indicate full-time employment.

9. Doing the work on the employer's premises implies employer control, especially where the work is of such a nature that it could be done elsewhere. The use of desk space and of telephone and stenographic services provided by an employer places the worker within the employer's direction and supervision unless the worker has the option as to whether he wants to use the facilities. However, the fact that work is done off the premises does not always indicate freedom from control since some occupations, i.e., employees of construction contractors, are necessarily performed away from the premises of the employer.
10. If the order of the performance of services is, or may be, set by the employer, control by the employer may be indicated.
11. The submission of regular oral or written reports indicates control since the worker must account for his actions.
12. If the manner of payment is by the hour, week or month, an employer-employee relationship probably exists; whereas, payment on a commission or job basis is customary where the worker is an independent contractor. The guarantee of a minimum salary or the granting of a drawing account at stated intervals with no requirement for repayment of the excess over earning tends to indicate the existence of an employer-employee relationship.
13. Payment of the worker's business expenses by the employer indicates control of the worker.
14. The furnishing of tools, materials, etc., by the employer indicates control over the worker.
15. A significant investment by the worker in facilities used by him in performing services for another tends to show an independent status. And, the furnishing of all necessary facilities by the employer tends to indicate the absence of an independent status on the part of the worker. Facilities include, generally, equipment or premises necessary for the work but not tools, instruments, clothing, etc., that are commonly provided by employees in their particular trade. In order to be significant, the investment must be real, essential and adequate.
16. The possibility of a profit or loss for the worker as a result of his services generally shows independent contractor status. Factors that affect whether or not there is a profit or loss are whether: the worker hires, directs and pays assistants; he has his own office, equipment, materials or other facilities for doing the work; he has continuing and recurring liabilities or obligations; his success or failure depends on the relation of his receipts to his expenditures; he agrees to perform specific jobs for prices agreed upon in advance; and he pays expenses incurred in connection with the work.

17. Work for a number of persons at the same time often indicates independent contractor status because the worker is usually free, in such cases, from control by any of the firms. It is possible, however, that a person may work for a number of people or firms and still be an employee of one or all of them.

18. The availability of services to the general public usually indicates independent contractor status. This may be evidenced by the worker having his own office and assistants, hanging out a "shingle" in front of his home or office, holding business licenses, maintaining business listings in telephone directories or advertising in newspapers, trade journals, magazines, etc.

19. The right of discharge is that of an employer. An independent contractor, on the other hand, cannot be "fired" without incurring liability if he is producing a result that measures up to his contract specifications. A restriction on the employer's right to discharge in a labor union contract does not detract from the existence of an employment relationship.

20. The right to quit at any time without incurring liability indicates an employer-employee relationship. An independent contractor usually agrees to complete a specific job and he is responsible for its satisfactory completion or is legally obligated to make good for failure to complete the job.



An excellent publication, *Independent Contractor vs. Employee* by North Central Regional Educational Materials Project is available for \$8.00 from University of Missouri Outreach and Extension Publications, 2800 Maguire, Columbia, MO 65211-0001; phone: 573/882-7216.

EMPLOYER RESPONSIBILITIES

Who is a liable employer?

There are five different types of employing units that can become liable to pay unemployment taxes and provide workers unemployment insurance coverage:

1. General business employers;
2. Governmental entities;
3. nonprofit organizations described in Section 501(c)3 of the Internal Revenue Code;
4. Employers of domestic (household) workers;
5. Employers of agricultural workers.

There are four different ways in which a general business employer will become liable:

1. By having a total payroll of \$1,500 or more in a calendar quarter during either the current or the preceding calendar year;

2. By employing a worker for some portion of a day in each of 20 different weeks in either the current or preceding calendar year;
3. By acquiring and continuing without interruption substantially all of the business of another employer (applies to all types of employing units);
4. By being liable under the Federal Unemployment Tax Act and employing a worker in Missouri.

A nonprofit organization described in 501(c)(3) of the Internal Revenue Code becomes liable if it employs four or more workers for some portion of a day in 20 different weeks during the current or preceding calendar year.

An agricultural employer who, in all states combined, has 10 or more workers in 20 different weeks or pays as much as \$20,000 in cash wages in a calendar quarter, during the current or preceding year, becomes liable to cover workers and pay unemployment taxes.

An employer of a domestic or household worker in a private home, college sorority or fraternity, becomes liable when as much as \$1,000 in cash wages are paid in a calendar quarter during the current or preceding calendar year.

An employer is liable for all employment it has during the entire year in which liability was incurred and continues to be liable for following years until its liability is terminated.

Any employing unit that does not have sufficient employment or wages to become liable under the foregoing conditions may elect to become an employer subject to the Law and to cover workers for unemployment insurance. Such an election would go into effect on the first day of the quarter in which the election is made and must continue in effect for at least two complete calendar years.

Posters

Each employer is required to post and maintain a placard, "Notice to Workers Concerning Unemployment Benefits." This notice should be placed in locations so as to be visible to all workers. Workers who do not have access to the posters should otherwise be notified of their unemployment insurance coverage. The pamphlet, "Information for Workers," should be given to a worker when separated from employment. The posters and pamphlets are available at all local Employment Security/Job Service offices in the state.

Records

Employers must keep records for at least five (5) calendar years, as well as the current incomplete calendar year. The records must show the following information for each worker:

1. Worker's name and social security number;
2. Dates a worker was hired and separated;
3. Dates on which a worker performed some services;
4. The location where services were performed;
5. The amount of remuneration paid each worker;
6. The hours of each day in each pay period an individual worked in noncovered employment, and nature of work; and,
7. Wages, including commissions, bonuses, prizes and gifts. Also, tips received by a worker from persons other than employer, if such tips are reported to the employer for social security purposes.

Contribution and Wage Report

Each liable employer is required to file a quarterly contribution and wage report. This report must show the worker's name, social security number and the amount of wages paid to each wage earner during a calendar quarter. Work separation dates and the beginning and ending dates of probationary employment should be included in the wage detail.

The report is also used to summarize total and taxable wages paid during the calendar quarter and to compute the amount of contributions due on the taxable wage total. Complete instructions for preparation of this report are furnished with the report.

Contribution and wage report forms are furnished by the Division of Employment Security and are mailed to all established employers near the end of each calendar quarter. These reports should be filed and contributions paid during the month following the end of each calendar quarter. No part of the contributions due can be deducted from a worker's pay.

Assessments: Failure to file reports or pay tax when due will result in an assessment against the employer. A certificate of assessment may be filed in the circuit court where the employer resides or has assets. Once filed, it has the effect of a judgment upon any real or personal property of the employer.

Penalties: Failure to file contribution and wage reports could result in an estimated wage assessment and an additional 10% penalty charge. The law also provides for a 25% penalty if fraud or evasion is discovered.

Audits: All employing units in Missouri are subject to having their records examined by an authorized representative of the Division of Employment Security. Audits of employers' records are conducted periodically to

ascertain proper reporting of workers and wages. Failure or refusal by an employer or employing unit to make records available may result in the issuance of a subpoena to compel production of books and records.

Employment and Wages

Reportable wages include gross cash payments plus the reasonable cash value of other considerations, such as meals or lodging, received by a worker for personal services. The value of other considerations is excluded from wages with respect to domestic or agricultural employment. Bonuses, commissions, vacation pay, holiday pay and termination pay are wages. Tips received from persons other than the employing unit are wages to the extent required to be reported under the Federal Unemployment Tax Act. No payroll deductions are excluded from wage amounts reportable.

The law does not exempt from wages, payments made under a cafeteria plan under Internal Revenue Code Section 125. Elective employee salary reduction contributions to cash or deferred arrangements under Internal Revenue Code Section 401(K) are not exempt.

The Law exempts from wages, payments made by an employer to or on behalf of a worker for medical or hospitalization expense or death, including payments made into a fund, annuity, or for insurance, for these purposes, provided such payments are made under a plan that applies to all workers or a class of workers. Payments made to an employee for sickness or disability would be wages unless made under a workers' compensation law. Such payments made by a third party may be reported as wages by such third party if no accounting of payments is made to the employer.

The Law further exempts from wages any payments on account of sickness, accident, disability, or medical or hospitalization expenses that are made by an employer to or on behalf of an individual after the expiration of six calendar months following the date an individual last worked, regardless if such payments were made under a plan or a workers' compensation law.



Wages do not include payments by an employer, to or on behalf of an individual, from or to a trust, described in U.S.C. 401(a) that is exempt from federal income tax under 501(a), or payments under or to an annuity plan that meets the tax exempt requirements of 404(a)2 of the Internal Revenue Code.

For additional information, please request a copy of the booklet "Employers' Rights and Responsibilities" either from your local **Employment Security Job Service** office or from the **Division of Employment Security**, P.O. Box 59, Jefferson City, MO 65102-0059.

OBTAINING AN EMPLOYER IDENTIFICATION NUMBER



Every employer maintaining an office or transacting any business in Missouri and making payment of wages to a resident or nonresident individual must obtain a Missouri Employer Tax Identification Number (EIN), which is required by federal law if you are an employer, partnership or corporation. Some entities, such as financial institutions, also require a business to have an identification number. The application form (SS-4) is available from the Internal Revenue Service (IRS) or from our office.

FEDERAL REQUIREMENTS

Withholding Taxes

Employers are generally required to withhold federal income tax, social security tax, and Medicare tax from their employee's pay. Don't forget that you are not your own employee. Officers of their own corporations can be employees, but partners and sole proprietors cannot. Guaranteed payments to partners and draws of money from a business by the owners are not wages. Partners and owners are taxed on net profits, whether or not they draw out the money. They do not withhold taxes from these profits; instead, they make quarterly payments of their estimated taxes on Form 1040-ES.

To withhold federal income tax properly from an employee's wages, employers need four pieces of information:

- amount of wages
- payroll period
- employee's marital status
- number of withholding allowances claimed by employee (W-4)
- special rules applying to particular classes of work and employees

Citizenship

Under current federal law, all employees hired after November 6, 1986 must verify that they are authorized to work in the United States. This includes all employees, including yourself if you are an employee of the corporation.

Employers are required by law to complete the I-9 Employment Eligibility Verification Form on every employee. The form is simple and asks that you review documents (copy of birth certificate, passport or green card) that verify the employee's identity and right to work. To obtain a copy of the I-9 or for more information about your responsibilities, call the Immigration and Naturalization Service (INS) at 1-800-375-5283. The INS has offices in St. Louis and Kansas City.

Employee's Withholding Allowance Certificate (W-4)

Each employee must fill out a Form W-4 in order to have proper amounts of income tax withheld. If an employee does not fill out a Form W-4, the employer must withhold taxes as if the employee were single with no allowances.

Exemptions determine amounts not taxed on an income tax return. Withholding allowances determine amounts that decrease the tax withheld from wages. Withholding allowances claimed on the Form W-4 can be more or less than exemptions claimed on the tax return. Employers are not required to verify the accuracy of allowances claimed.

Social Security and Medicare Taxes

Social security is withheld only on annual wages up to a maximum of \$61,200 for each employee. The employer withholds 6.2% from wages and then pays a matching amount. The Medicare portion of FICA is withheld on all wages for each employee; the employer withholds 1.45% from wages and then pays a matching amount. An employer who hires his or her child under 18 does not have to withhold FICA from the wages nor match it. Wages paid to a spouse employed by a spouse are subject to FICA.

A sole proprietor or a partner does not withhold FICA from his draw. In these cases, payments of social security and Medicare taxes, called the self-employment tax, are figured along with the estimated income tax and normally paid during the year in four equal amounts with Form 1040-ES payment vouchers. The base is also in effect for the social security portion of the self-employed tax. The tax is figured at a rate of 15.3% (12.4% +2.9%) for 1995. However, the law allows the following two deductions:

1. A deduction of half your self-employment tax from your self-employment income in figuring your income tax. This deduction is not allowed in figuring your self-employment tax, and;
2. A deduction from your self-employment income of half of the self-employment tax rate multiplied by your net self-employment income. The deduction is not allowed in figuring your income tax.

For more information on estimating taxes, see IRS Publication 505, "Tax Withholding and Estimated Tax."

Social security and Medicare taxes are figured on wages without deducting withholding allowances. Marital status makes no difference. FICA is a flat 7.65% (6.2% + 1.45%) of the gross wage, up to the wage base limit. In other words, the wage is multiplied by .0765. The employer must pay a matching amount.

STATE REQUIREMENTS

New Hire Reporting

All employers in Missouri must report each newly hired employee to the Department of Revenue within 20 calendar days of hire. Employers may choose the form they use to report new hires. They should send a copy of the federal W-4 form or an equivalent form containing the following information to the Department of Revenue:

- Employee's name, address and Social Security number
- Employer's name, address and federal employer identification number (EIN)
- Employee's date of hire or the date the employee signed the W-4 form

Note: The date of hire is defined as the earlier of the date the employee signed the W-4 form, or the first date the employee reports to work, or performs labor or service.

Employers may use one of the following reporting methods:

1. Mail the W-4 or equivalent form to the Missouri Department of Revenue, P.O. Box 3340, Jefferson City, Missouri 65105-3340;
2. Fax copies to (573) 526-8079; or
3. Electronic filing

Employers having employees in two or more states **and** who transmit reports magnetically or electronically may choose **one** of the states in which they have employment to which all new hires will be reported. The employer must notify the Secretary of the U.S. Department of Health and Human Services (DHHS), of the chosen state. DHHS is developing procedures to accomplish such selection and notification.

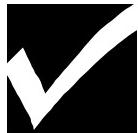
An employer who intentionally fails to submit information on an employee is guilty of an infraction and shall be fined not more than \$25. If the failure to report is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report, the fine shall be \$350 for each failure to report or each false or incomplete report.

Here is what happens to the reports after employers submit them:

Department of Revenue: The Department of Revenue staff will forward the federal W-4 form or its equivalent to the Division of Child Support Enforcement.

Division of Child Support Enforcement: The Division of Child Support Enforcement (DCSE) will enter new hire information into the State Directory of New Hires. DCSE staff will match names in the directory with names of

non-custodial parents on record with the division. Information obtained from any employer will be held confidential and will not be published or be open to public inspection other than to public employees in the performance of their public duties.



Effective July 1, 1997 changes were made to the program as a result of the passage of the Personal Responsibility and Work Opportunity Act of 1996 (aka Welfare Reform). Changes in reporting requirements was necessary to speed up the child support income withholding process, to expedite support collections from obligors who change jobs frequently, to quickly locate potential obligors for paternity establishment or support order establishment and to help children regularly receive their support.

You can learn more about New Hire Reporting in Sections 285.300 through 285.306 of the Revised Statutes of Missouri or by contacting the Division of Child Support Enforcement, P.O. Box 2320, Jefferson City, MO 65102-2320 or call (573) 751-4301 or (800) 859-7999. You may also send an e-mail message to: askcse@mail.state.mo.us

Withholding Taxes

Every employer maintaining an office or transacting any business in Missouri and making payment of wages to a resident or nonresident individual must obtain a Missouri Employer Tax Identification Number. State tax is then withheld from the employees' payroll and remitted to the Missouri Department of Revenue. For more information contact: Tax Administration Bureau, P.O. Box 999, Jefferson City, MO 65108-0999; phone: 573/751-5752.

Employers file income tax withholding returns on form MO 941 (Employer's Report of Income Taxes Withheld). Employers also file an Employer's Annual Reconciliation Report of Income Tax Withheld by January 31 of the year following the reporting year. The form is supplied by the Department of Revenue.

In addition to filing your withholding taxes by mail, the Missouri Department of Revenue offers two alternative methods:

Telefile - By calling a toll free number you can file your withholding tax return using the Telefile System.

Electronic Data Interchange (EDI) - EDI offers two options for filing your withholding tax return. The first option allows you to provide return information to your bank. The second option allows you to transmit your return through a value-added network to the Department by use of EDI translation software.

These options are available to any Missouri taxpayer filing a Form MO-941W, Employer's Monthly Report of Quarter-Monthly Payments or Form MO-941, Employer's Return of Income Taxes Withheld. To learn more about these alternative-filing methods, please contact the Tax Program Coordinator, P.O. Box 371, Jefferson City, MO 65105-0371 or call 573/751-3930.

The amount of withholding is based on the employee's wages, including reported tips, during the payroll period, marital status, and withholding exemptions. Employers must obtain a MO W-4 (Missouri Employee's Withholding Allowance Certificate) from each employee at the time work begins. Employees who do not complete the form are subject to withholding at the rate for single persons with no exemptions. Employees are entitled to the same number of personal and dependent exemptions on the state level as they are for federal withholdings.

Employers are required to keep records for all of their employees, including their names, addresses, Social Security numbers, period of employment, and dates and amount of wages subject to withholding.

In addition to state income tax withholdings, some municipalities impose an earnings tax on wages, salaries, other remuneration of city residents and of nonresidents working in the city.

To register with the Missouri Department of Revenue and receive an employer withholding tax number, request a copy of form 2643 (same form to obtain a sales tax number and a corporate income tax number). This form is available via the Web or can be requested from our office.

The Department of Revenue also produces a publication, "Employer's Tax Guide" that includes instructions and reporting forms. The Guide is available from the Department of Revenue (1-800-877-6881) or from our office.

Unemployment Insurance

Most companies doing business in Missouri are required to pay unemployment insurance to protect their workers during unemployment. This applies to most businesses having one or more workers on the payroll for 20 weeks during the calendar year, and to businesses paying an individual employee \$1,500 in a given quarter.

Currently rates are based on the first \$8,500 of each employee's annual salary. The employer with a credit balance will contribute at a rate of 0.00 (zero) percent to 2.7 percent. The employer with a deficit account will pay up to 6.0 percent; and a manufacturer new to Missouri with no experience rating, will pay the normal entry rate of 2.7 percent for 1999.

The Missouri Division of Employment Security is the state agency responsible for the administration of the unemployment insurance benefit and tax program and maintaining a free public employment office. The Division has responsibility to both workers and employers.

The division strives to administer the employer tax provisions of the Law equitably in accordance with the intent of the General Assembly of the State of Missouri. An effort is made to tax employers as little as possible while at the same time provide essential benefits to workers who are unemployed through no fault of their own and who are able, available, and actively seeking work.

The State Unemployment Insurance Laws must conform to certain standards in the federal Employment Tax Law administered by the United States Department of Labor. By conforming to these laws, Missouri employers are allowed to take a credit on federal unemployment tax returns, if state taxes are paid timely. This credit is allowed regardless of an employer's state tax rate.



We recommend that you obtain a copy of the division's handbook, *Employers' Rights and Responsibilities* from any local Employment Security/Job Service office, or by writing to MO Division of Employment Security, P.O. Box 59, Jefferson City, MO 65102-0059.

"Report To Determine Liability Status" (MoDES 2699)

Any person or organization that finds any of the following statements true for their business is required to make contributions to the Missouri unemployment compensation fund:

- paid taxes of at least \$1,500 in the current or preceding calendar quarter;
- employed at least one person for some portion of a day in each of 20 different calendar weeks in the current or preceding calendar quarter - - whether or not the same person was employed on each day or the weeks were consecutive;
- acquired substantially all of a business making contributions to the Missouri unemployment compensation fund; or
- elected to become subject to the Missouri unemployment compensation law.

Employers subject to the law register with the Division of Employment Security on a "Report to Determine Liability Status" (MoDES 2699). [Note: this form was previously called "Registration of Employment Experience"]

Worker's Compensation

All businesses with five or more employees (except agricultural or domestic labor) must provide worker's compensation insurance to protect their workers in case of job-related injury, illness or death. Construction companies need workers compensation insurance if they have one or more employees.

Companies can offer this protection through a private insurance carrier or they can become self-insurers. Premium rates vary, depending on the risks associated with special occupations. As in most states, the premium rates apply to an employee's total annual salary. The maximum weekly benefit for temporary total disability, temporary partial disability, permanent total disability and death is currently computed as 105 percent of the average weekly wage, determined annually on July 1. Missouri's worker's compensation rates compare favorably with those in other states. Though benefits for claimants in other states usually increase automatically from year to year, in Missouri benefits cannot be increased without the review and approval of the state legislature.

In making the decision to enter into a new business venture, workers' compensation liability should be a primary area of concern. This article will provide some basic information regarding workers' compensation and will then pose and answer a number of questions such as might be asked of any attorney or insurance agent by any person entering into a small business enterprise.

The workers' compensation system is a statutorily created, state administered, no-fault program which constitutes an injured employee's sole remedy against the employer and which protects the employer from tort liability. The system is not intended to constitute a form of general health insurance. Rather, the system exists for the purpose of compensating employees who are injured, or who contract occupational diseases, which arise out of and in the course of employment. The law is liberally construed to bring the largest possible class of employers, employees and injuries under its provisions.

Furthermore, there is no limitation as to the kinds of injuries or diseases that might be found to be compensable. The term "injury" has been found to include, along with the usual lacerations, contusions, fractures, strains, and certain occupational diseases, to also include repetitive motion disease, some heart attacks and mental injuries, injuries as a result of exposure to fumes or weather, even injuries that occur as a result of misbehavior, involve intoxication or altercations among employees, the term can even include the results of sexual assault. But for a few exemptions, all kinds of businesses are subject to the law and in all likelihood the business which you are contemplating starting up will similarly be included. Thus, you should ask yourself the following questions and understand the following coverage principles.

Will my business be subject to the law?

Every employer with five or more employees regularly employed is under the workers' compensation law. For many decades the law could be rejected, that is no longer true. Similarly, the nature of the business makes no difference, the law applies equally to hazardous employment versus non-hazardous, businesses operated for profit, corporations, partnerships, joint ventures and sole proprietorships. The only employment exempted, regardless of the number of workers, are farm labor, domestic servants in a private home or occasional labor performed for and related to a private household. Those exempted employments, and employers with less than five employees regularly employed, can come under the law by election, or may become subject to the law, by purchasing workers' compensation insurance. The wisest course is to assume that your business will be under the law unless you are certain that it will not be and you are comfortable under those circumstances.

Must my business have workers' compensation insurance?

Every employer under the law must either purchase and maintain valid workers' compensation insurance coverage or qualify as a self-insurer, either individually or as a member of a group. To be self-insured, state approval must be obtained and if an employer has not demonstrated the necessary qualifications and obtained the requisite approval, the employer is "bare" regardless of the employer's actual financial ability to pay claims.

What happens if my business does not have worker's compensation insurance, and is not a qualified self-insurer, should an injury occur?

If an employer subject to the law fails to insure or self-insure, the penalties are considerable. First of all, under those circumstances the injured employee has a right to either pursue the workers' compensation remedy or to file a civil suit for damages. In the event that the latter course of action is taken, the employer may not interpose defenses such as the negligence of a fellow servant or the employee's contributory fault. If the employee elects to pursue a workers' compensation claim, the law provides that all compensation shall be immediately computed and payable and the award can then be certified as a judgment and the employer's assets attached.

What if I decide I do not want to continue workers' compensation insurance and my business is small enough that I do not have to have coverage?

If an employer, not automatically under the law, chooses to accept the law, that acceptance remains in force until that acceptance is withdrawn through a formal filing with the Division of Workers' Compensation. Perhaps more importantly, if a business purchases workers' compensation coverage, the employer automatically comes under the law and that status will continue even if the insurance policy is canceled or not renewed. Consequently, any employer who can opt out must be certain to notify the state even if the business accepted the law only the business' previous purchase of insurance coverage.

Who must the business count as an employee?

Anyone to whom the business pays a salary or wage for services performed must be considered an employee and the term can even include those who work for no pay at all. Partners and sole proprietors are not counted and executive officers only if the officers perform actual services for the business or are subjected to the hazards of the industry. In addition, it is not necessary that all employees to be counted be employed at the same moment in time, employees employed on a staggered basis, but employed to work on a single project, may all be counted to determine whether the business has or had five or more employees "regularly employed."

Can my business avoid being under the law through the use of independent contractors?

The use of contracting as a technique to avoid workers' compensation exposure is very risky at best. There is a provision in the law intended to prevent this practice. This provision creates "statutory" or presumptive employment in circumstances where a business contracts to have work performed on its premises which is the normal course of the work of that business. If those three criteria are met, the "statutory employer" becomes liable to provide workers' compensation benefits to uninsured subcontractors or the employees of uninsured subcontractors. Although this provision primarily affects the construction industry, it applies to all employ-ments exempting only landowners who are having improvements erected, repaired, altered or demolished. Moreover, the term "employee" is very liberally construed under the state workers' compensation law and many individuals would be deemed as direct employees of a business even though they might be accepted as independent contractors under other statutes or regulations, i.e., by the IRS. In other words, you cannot conduct your usual business through the use of independent contractors and escape workers' compensation liability.

If my business comes under the law, am I safe from civil suits in the event that an employee is injured?

As a rule, if workers' compensation jurisdiction applies, the employer cannot be sued under civil law, either directly or indirectly. However, there are a few exceptions. One exception involves intentional torts such as an assault. Another exception involves the situation where the employer leaves the role of the employer and steps into the role of a co-employee and while working in that capacity causes injury. There, the employer or an individual manager may be subject to suit and the employer's insurance coverage may not apply. Fortunately, however, the Missouri courts have allowed only a few exceptions to the rule of "exclusivity" and the fact of workers' compensation jurisdiction affords the business immunity from a civil judgment for damages on account of a work-related injury.

In conclusion, every business person must be cognizant of worker's compensation liability. No business can avoid exposure to the costs of work-related injury and even those businesses who are sufficiently small not to automatically come under the law, should seriously consider electing workers' compensation coverage since liability for work-related injury or disease exists even in the absence of workers' compensation jurisdiction. The trade-off, the obligation to supply workers' compensation benefits in exchange for limited damages, remains a good bargain for both the business and its workers.



For additional information:

You can obtain further information from the Missouri Division of Workers' Compensation at 1-800-775-2667 or consult with your attorney or insurance representative.

This article, written by James B. Kennedy, appeared in the St. Louis Business Journal and is re-printed with their permission.

OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)

All employers must furnish to employees employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious harm to employees. Employers must comply with occupational safety and health standards issued under the Act.

Employees must comply with all occupational safety and health standards, rules, regulations and orders issued under the Act that apply to their own actions and conduct on the job.

The Act requires that a representative of the employer and a representative authorized by the employees be given an opportunity to accompany the OSHA inspector for the purpose of aiding the inspection. Where there is no authorized employee representative, the OSHA Compliance Officer must consult with a reasonable number of employees concerning safety and health conditions in the workplace.

Employees or their representatives have the right to file a complaint with the nearest OSHA office requesting an inspection. If they believe unsafe or unhealthful conditions exist in their workplace, OSHA will withhold, on request, names of employees complaining. The Act provides that employees must not be discharged or discriminated against in any way for filing safety and health complaints or for otherwise exercising their rights under the Act.

If upon inspection OSHA believes an employer has violated the Act, a citation alleging such violations will be issued to the employer. Each citation will specify a time period within which the alleged violation must be corrected. The OSHA citation must be prominently displayed at or near the

place of alleged violation for three days, or until it is corrected, whichever is later, to warn employees of dangers that may exist there.

The Act provides for mandatory civil penalties against employers of up to \$7,000 for each serious violation and for optional penalties of up to \$7,000 for each nonserious violation. Penalties of up to \$7,000 per day may be proposed for failure to correct violations within the proposed time period and for each day the violation continues beyond the prescribed abatement date. Also, any employer who willfully or repeatedly violates the Act may be assessed penalties of up to \$70,000 for each such violation. A minimum penalty of \$5,000 may be imposed for each willful violation. A violation of posting requirements can bring a penalty of up to \$7,000. There are also provisions for criminal penalties.

Free assistance in identifying and correcting hazards and in improving safety and health management is available to employers, without citation or penalty, through OSHA-supported programs in each State; contact: Department of Labor and Industrial Relations, Division of Labor Standards, 3315 West Truman Blvd., P.O. Box 449, Jefferson City, MO 65102; phone: 573/751-3403 or 1-800-475-2130.

Additional information and copies of the Act, specific OSHA safety and health standards and other applicable regulations may be obtained from the OSHA regional office in Kansas City, MO at 816/426-5861.

If you are a small business subject to OSHA regulations, the *OSHA Handbook for Small Business* will give your business the information it needs to comply with federal occupational safety and health law. You can order by mail from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Ask for publication #029-016-00144-1. The cost is \$4.00 per copy, postpaid. Orders charged by Visa or MasterCard may be placed by phone at 1-800-393-7743 between 8 a.m. and 4 p.m. Eastern time.

INTERNAL REVENUE SERVICE (IRS) ASSISTANCE AND PUBLICATIONS

While the IRS is the source of much consternation for many of us, they also provide a great deal of helpful information and assistance to the small business owner. The IRS even has a web site (<http://www.irs.ustreas.gov/prod/cover.html>) where you can retrieve:

- variety of forms
- IRS publications
- newsletters
- a business tax kit
- Tax Information for Business

It is definitely worth the visit!

Alternatively you can obtain a “business tax kit” and a copy of “Circular E, Employer’s Tax Guide” from your local IRS office or call 1-800-829-3676. “Circular E” explains federal tax withholding and Social Security tax requirements for employers as well as containing up-to-date withholding tables for you to use to determine how much federal income tax and Social Security tax is to be withheld from each employee’s paycheck.